IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3967 OF 2006

Sameer Madan Patil .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.N.N.Gavnekar with Arfan Sait for applicant

Mr.S.S.Pednekar, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 7th November 2006.

P.C.

. Present application arises out of the fact that the applicant who is an accused in Sessions Case No.181 of 2001 had a non bailable

warrant issued against him. He prayed that the same be not executed by filing an application (Exh.61) in Sessions Case No.181 of 2001. Learned Adhoc Additional Sessions Judge I, Sangli, by the impugned order rejected this application. Applicant, therefore, now apprehends his arrest.

2. Mr.Gavnekar, learned Counsel appearing for the applicant after inviting my attention to an order passed in Application No.3030 of 2006 submits that the applicant is an accused in two sessions case. He was also an accused in connection with MCOC case which resulted in his acquittal. In both sessions cases, he is enlarged on bail but a condition has been imposed by this Court while enlarging him on bail not to enter limits of Sangli district. It is in these peculiar circumstances that he could not attend the sessions case. While it is true that the non bailable warrant was issued on 15th July 20043

and was not executed, the applicant on his own remained present before the trial Judge. The learned Judge has not disputed the fact that condition of the above nature has been imposed but has not cancelled the non bailable warrant because the accused has remained absent for quite some time. Sessions case is fairly old one. It is in these circumstances, that Mr.Gavnekar prays that the applicant be permitted to avail of the benefit of the order releasing him on bail and the non bailable warrant issued against him be cancelled.

3. Learned A.P.P. has pointed out that the applicant remained absent and the learned Trial Judge, therefore, was justified in passing the order and refusing to cancel non bailable warrant. Learned A.P.P. points out that the non bailable warrant was issued as early as on 15th July 2004 but the applicant did not attend the Court.

4. Having perused the application and the annexures thereto so also the impugned order, in my view, the trial court was right in concluding that the non bailable warrant was issued on 15th July 2004 because the applicant accused in the instant sessions case remained absent. However, the trial court was aware of the condition imposed by this Court on the applicant and it is on account of the said condition being imposed that the applicant did not enter Sangli district for attending the case. There is substance in the contention of Mr.Gavnekar that on account of this mis-interpretation or under an erroneous assumption of the condition imposed by this Court, the applicant should not suffer and deserves a last chance. More so, when he is present in the court today and has undertaken to attend the trial court on the dates when the trial court fixes the hearing/trial.

5. In my view, ends of justice would be met if the non bailable warrant dated 15th July 2004 is cancelled on the following condition.

(a) Applicant to attend the Court of Adhoc Additional Sessions Judge I, Sangli who is trying Sessions Case No.181 of 2001 on 17th November 2006.

(b) Hearing of this sessions case is also expedited and the learned Judge to endeavour and dispose of the same as expeditiously as possible and by 31st October 2007.

(c) To enable the applicant to attend the trial court it is clarified that the conditions imposed by this Court directing the applicant not to enter Sangli district shall stand relaxed only to this extent and to enable him to

attend hearing of both sessions case. Needless to state that in default of appearance of the applicant on 17th November 2006 before Adhoc Additional Sessions Judge I, Sangli so also if no exemption is granted it would be open for trial court to pass appropriate orders in accordance with law.

(d) All concerned including Adhoc Additional Sessions Judge I, Sangli to act on an authenticated copy of this order.

(S.C.Dharmadhikari, J)